

**DEANNA PORTER**  
Claimant  
VS.  
**PAYLESS SHOE SOURCE**  
Respondent  
AND  
**SELF INSURED**  
Insurance Carrier

K.S.A. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues of whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is timely given or timely claim made, or whether certain defenses apply.

The Appeals Board has ruled on numerous occasions that temporary total disability and the ordering of compensation for same falls within the authority of the Administrative Law Judge at preliminary hearings. In this case, the Administrative Law Judge found this claim compensable and ordered temporary total disability compensation commencing July 6, 1994, and continuing until further order or until claimant is certified as having reached maximum medical improvement, or released to regular job, or becomes re-employed, whichever occurs first. As this is not an issue listed in K.S.A. 44-534a, the Appeals Board finds the Administrative Law Judge did not exceed his jurisdiction in making such order. Accordingly, the Appeals Board does not have jurisdiction to review the order of temporary total disability compensation except as it relates to the jurisdictional issue of whether claimant's injury arose out of and in the course of her employment.

Claimant moves to dismiss the appeal on the grounds that it fails to raise a jurisdictional issue, citing a prior decision by this Appeals Board involving a back injury at work which led to a psychological injury. The Appeals Board found in that case that the issue should not be characterized as whether the psychological injury arose out of and in the course of employment but instead was more analogous to a dispute over the nature and extent of disability. Although the issue raised by respondent's assertion of an intervening accident does not fit exclusively within any of the issues listed with in K.S.A. 44-534a, it is an issue which can be viewed as simultaneously involving nature and extent as well as causation. The Appeals Board does, therefore, consider the decision finding the claimant's current condition to be compensable to be an appeal of an issue which is subject to review by the Appeals Board from a preliminary order. Accordingly, the Appeals Board will review the Order as raising a disputed issue as to whether the injury arose out of and in the course of the employee's employment.

Claimant began working for respondent in April 1991 doing janitorial work. She was injured on July 20, 1993, when she slipped and fell in water on a bathroom floor, landing on her tailbone. Her injuries were primarily to her tailbone and low back. She received medical treatment including physical therapy and work hardening. She was off work for approximately two and one-half weeks before returning to light duty and eventually regular duty in about September of 1993. Claimant last worked on July 6, 1994, when, according to her testimony, she just could no longer do her work due to problems with her back.

Respondent argues that the conditions for which claimant requests medical treatment and temporary total disability compensation do not arise out of her original work-related injury of July 20, 1993. In support of this argument, respondent points to the fact that claimant returned to regular duty and for approximately ten (10) months performed her regular job duties and even performed tasks that were of a heavier nature than those she was performing at the time of her injury. She had been evaluated by a physician selected by her attorney in January 1994 and determined to have reached maximum medical improvement and was provided a permanent impairment rating. In addition, she did not seek medical treatment from the authorized physician between September 1993 and July 1994 and in the opinion of that doctor she was capable of returning to work. Respondent argues that if claimant is temporarily totally disabled then it must be from some intervening event and not the accident of July 1993.

Claimant denies having had any accidents or injuries since July 20, 1993. Although she continued to work until July 6, 1993, it was with constant problems with her back. She treated regularly with her personal physician during this period and was eventually taken off work by that physician in July 1994 due to the work-related injury. The medical records introduced into evidence establish ongoing complaints and treatment by said personal physician and further establish that those complaints were consistently related to the July 20, 1993, slip and fall at work. There is no evidence of an intervening accident or other cause for claimant's back condition.

It is the finding of the Appeals Board that claimant's present condition does stem from the admitted July 20, 1993, accident and therefore did arise out of and in the course of the claimant's employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the October 10, 1994, Order by Administrative Law Judge James R. Ward is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Frederick J. Patton, II, Topeka, KS  
James C. Wright, Topeka, KS  
Ronald J. Laskowski, Topeka, KS  
James R. Ward, Administrative Law Judge  
George Gomez, Director